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No. 31, Original

IN THE

Supreme Court of the United States

October Term, 1967

STATE OF UTAH,
Plaintiff,

v.

UNITED STATES OF AMERICA,
Defendant

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

Phil L. Hansen
Attorney General of Utah
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236 State Capitol Building
Salt Lake City, Utah

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AUTHORITY CITED

Public Law 89-441, 80 STAT. 192, as amended by Public Law 89-542 (copy attached as Appendix) 16

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STATE OF UTAH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant

MOTION FOR LEAVE TO FILE COMPLAINT AND COMPLAINT

The State of Utah, by its Attorney General, respectfully requests leave of this Court to file the complaint submitted herewith against the United States of America.

Phil L. Hansen
Attorney General of Utah

Counsel for Plaintiff

236 State Capitol Building
Salt Lake City, Utah

PURPOSE OF MOTION

The motion for leave to file a complaint by the State of Utah against the United States of America is for the purpose of adjudicating the conflicting claims of said parties to certain lands around the Great Salt Lake which are located below the surveyed meander of the lake and which have been exposed as a result of the fluctuation and lowering of the waters of the lake. The United States of America has consented to be sued only by an original action in this Court.

STATEMENT IN SUPPORT OF MOTION

This is an action by the State of Utah against the United States of America, proposed to be instituted in this Court under authority of Article III, Section 2, Clause 2, of the Constitution of the United States. The United States of America has consented to be sued in this Court in this action by virtue of Section 5(b) of the Act of June 3, 1966, Public Law 89-441, 80 Stat. 192, as amended by Act of August 23, 1966 (Public Law 89-542). See Appendix at page 16. The purpose of the proposed action is to recognize and quiet the title of the State of Utah and to adjudicate and decree that the United States of America has no right, title, or interest in or to the exposed lands or minerals therein surrounding and constituting a part of the bed of the Great Salt Lake in the State of Utah and situated below the surveyed meander line of said lake.

The State of Utah claims that by virtue of its admission into the Union on January 4, 1896, on an equal footing with all other states of the Union, it

received title to the beds of all navigable lakes and rivers located within the State of Utah. The Great Salt Lake was at the date of statehood, at all times since has continued to be, and now is a navigable body of water. Since the date of statehood, the waters of the Great Salt Lake have fluctuated considerably and now are at an elevation lower than the surveyed meander line and also lower than the level of such waters at the date of statehood. Since the date of statehood, the State of Utah has claimed title to the exposed lands situated below the mean high water mark and has continually managed, administered, and developed said lands. The United States of America has recently asserted a claim of ownership to substantial portions of the exposed lands on the ground that such lands are reliction lands and that the common law doctrine of reliction would give title to said portions of the exposed lands to the United States of America as a riparian owner of lands upland and adjacent to the surveyed meander line of the lake.

In other words, the State of Utah believes the United States of America now claims those exposed lands situated between the present water level of the lake and the surveyed meander line in those areas where the United States of America owns the land situated above and adjacent to said meander line. Further, the State of Utah believes the United States of America now claims ownership of various portions of the exposed lands situated around the lake where the land immediately above the surveyed meander line has been patented to private individuals but where a portion of the land below the surveyed meander was exposed at the date of the patent.

The State of Utah contends that it has not been

divested of its ownership of the bed of the Great Salt Lake simply because the waters of said lake have fluctuated substantially from time to time. The State of Utah claims that such fluctuations are substantial, erratic, temporary, and have not been the result of any natural, gradual, and permanent lowering of the waters of the Great Salt Lake so as to result in a change of the mean high water mark. This is based in part on the fact that artificial and man-made diversions, impoundments, and consumptive uses on the tributaries of the Great Salt Lake have substantially caused the periodic fluctuations and lowering of the water level of the lake.

Therefore, the State of Utah rejects any claim by the United States of America that the common law of reliction is applicable to the exposed lands of the Great Salt Lake. The exposed lands simply are not reliction lands; consequently, that doctrine cannot apply under the facts of the proposed litigation. The Great Salt Lake is unique further in that it has no outlet and is an exceedingly shallow saucer or bowl representing a remnant of historic Lake Bonneville, and a slight change in vertical elevation of the lake's surface will expose or inundate many thousands of acres. The common law of reliction should not apply at all to the Great Salt Lake because of its extraordinary and unique nature, nor should it apply in any event because water fluctuations are erratic, temporary, and the result of man-made interferences with water flows of the tributary streams. Even if the doctrine of reliction were to apply, no claim by virtue of that doctrine successfully can be asserted below the mean high water mark of the Great Salt Lake as of January 4, 1896, when the State of Utah

was admitted into the Union. Until a preponderance of evidence to the contrary is introduced, the mean high water mark at the date of statehood is presumed to be the surveyed meander line.

The exposed lands in question are not known to have any significant inherent value. But the waters and brines of the Great Salt Lake have a very substantial mineral content. Many private corporations have demonstrated an interest in extracting and marketing minerals from the brines and have executed leases with the State of Utah.

The process of extracting the minerals in the brines requires the use of substantial areas of the exposed lands situated near the edge of the water. It is impossible for the lessee private corporations to obtain financing to expend huge sums of money when there is uncertainty of title as to who owns the exposed lands which have to be utilized for mineral extraction.

Until these title questions are clarified, the State of Utah is seriously and substantially hampered and frustrated in the development of the mineral industry around the Great Salt Lake. These factors caused Congress to enact Public Law 89-441, 80 Stat. 192, as amended by Public Law 89-542, a copy of which is attached as Appendix following the complaint at page 16, which gives the consent of the United States of America to be sued in this Court in this action and also provides generally for a means of administering these exposed lands pending determination of the title questions.

The original jurisdiction of this Court is invoked

because both the State of Utah and the United States of America claim title to the same land and because such claims by the United States of America are doing substantial and irreparable injury to the State of Utah, for which the State of Utah has no adequate remedy at law. Full and complete relief is possible only in this Court. It is exceedingly important to the State of Utah that this Court grant the motion for leave to file the complaint and order that the complaint be filed and that summons be served on the United States of America.

Phil L. Hansen
Attorney General of Utah

Counsel for Plaintiff

236 State Capitol Building
Salt Lake City, Utah

IN THE

Supreme Court of the United States

October Term, 1936

No. ....., Original

STATE OF UTAH,

Plaintiff,

v.

UNITED STATES OF AMERICA,

Defendant

COMPLAINT

The State of Utah, by its Attorney General, brings this suit in equity against the United States of America, and for its cause of action alleges:

I

The jurisdiction of this Court is invoked under Article III, Section 2, Clause 2, of the Constitution of the United States, and the United States of America has consented to be sued in this Court in this action by virtue of Public Law 89-411, 80 Stat. 192, as amended by Public Law 89-542.

II

The State of Utah owns certain lands, hereinafter more fully identified, in which the United States of America claims an ownership interest contrary and

opposed to the ownership of the State of Utah. Public Law 89-441, 80 Stat. 192, as amended by Public Law 89-542, granted the consent of the United States of America to be sued in this action to determine what interest, if any, the United States of America actually owned in and to said lands. Said act authorized the State of Utah either to purchase the ownership interest claimed by the United States of America or to maintain an original action in this Court to determine whether the United States of America actually had any ownership interest. The State of Utah has formally determined and elected to maintain this action in this Court.

III

The Great Salt Lake is a navigable body of water located wholly within the State of Utah. The Great Salt Lake was navigable on January 4, 1896, when the State of Utah was admitted into the Union of the United States of America; it has at all times since been navigable; and it now is a navigable body of water. The fact of navigability was recognized by Congress in the enactment of Public Law 89-441, 80 Stat. 192, as amended by Public Law 89-542. The fact of navigability has been recognized further by the United States of America in its claim to the lands which are the subject of the instant litigation. At the date of statehood, by virtue of its admission into the Union on an equal footing with all other states, the State of Utah became the owner in a sovereign and proprietary capacity of the beds of all navigable lakes and streams located within the State of Utah. Therefore, at the date of statehood, by virtue of its admission into the Union on an equal

footing with all other states, the State of Utah became the owner, has ever since been the owner, and now is the owner of the absolute right to the bed of the Great Salt Lake as delineated and determined by the official surveyed meander line of the Great Salt Lake, which meander line represents the mean high water mark of said lake as it existed at date of survey and as it existed at the date of statehood. The State of Utah further owns all of the minerals contained within the waters of the Great Salt Lake and within the lands constituting the bed of the Great Salt Lake as herein defined.

IV

The State of Utah has at all times since the date of statehood managed and administered the lands constituting the bed of the Great Salt Lake located below the surveyed meander line. The State of Utah has invested many millions of dollars in the development and improvement of much of the land constituting the bed of the Great Salt Lake. Further, the State of Utah has issued agricultural, mineral, and other leases covering much of said land. The unqualified ownership of the State of Utah in and to these lands has been generally recognized and undisputed. The United States of America itself has recognized such ownership in the State of Utah for more than 65 years. In fact, the United States of America itself has purchased from and paid the State of Utah for certain of the lands constituting a part of the bed of the Great Salt Lake. The United State of America first asserted in 1959 a claim to part of the land owned by the State of Utah located below the surveyed meander line of the Great Salt Lake and

constituting a part of the bed of the Great Salt Lake. The United States of America had fully recognized title in the State of Utah prior to that time. The State of Utah believes that the United States of America now claims to own approximately 436,000 acres of the bed of the Great Salt Lake. Since these lake bed lands are unsurveyed, it is not possible to describe by metes and bounds the land in dispute. However, said lands are generally identified on a map prepared by the United States of America which purports to show those areas which are claimed by the United States of America. Said map is marked Exhibit A, attached hereto, at pp. 14 and 15, and by this reference made a part of this complaint. The claim of ownership of these lands by the United States of America is adverse to the ownership of the State of Utah. In fact, the United States of America has no right, title, or interest in or to any of the lands illustrated in Exhibit A or to any other part of the bed of the Great Salt Lake as located below and within the surveyed meander line.

V

The State of Utah owns the minerals and brines included within the waters of the Great Salt Lake. Said minerals and brines have a substantial value if the same can be extracted, processed, and marketed. The State of Utah has issued a number of mineral leases to lessees who are able and anxious to establish a mineral industry around the Great Salt Lake. Such an industry is vitally important to the economy and interests of the State of Utah. This mineral development requires the use of the exposed portions of the bed of the Great Salt Lake for settling ponds and for other uses incidental to the min-

eral extraction industry. The mineral extraction industry cannot proceed until there is certainty of title as to the exposed portions of the bed of the Great Salt Lake. The exposed lands constituting a part of the bed of the Great Salt Lake have no significant inherent value, but they are vital to the State of Utah for use in connection with said mineral extraction from the waters and brines of the Great Salt Lake. The claims and actions of the United States of America have impaired, hampered, frustrated, and prevented the State of Utah and its lessees from proceeding with the mineral extraction industry; the claims and actions of the United States of America further have cast serious clouds on the water fowl management areas and other developed portions of the bed of the Great Salt Lake now owned and managed by the State of Utah; and the claims and actions of the United States of America still further have cast a cloud on the ownership of the State of Utah as to all portions of the bed of the Great Salt Lake illustrated in Exhibit A. The State of Utah has suffered irreparable injury as a result of said claims and actions by the United States of America and will continue to suffer irreparable injury until such claims and actions by the United States of America cease. The State of Utah has no adequate remedy at law.

WHEREFORE, plaintiff prays:

1. That a decree be entered by this Court quieting title in the State of Utah as against any and all claims of the United States of America to the bed of the Great Salt Lake located within and below the official surveyed meander line of said lake; specifically declaring that the United States of America has no right, title, or interest

whatsoever to any part of said land or minerals located ther in or any part thereof, with the exception of the lands legally purchased and acquired by the United States of America from the State of Utah; and perpetually enjoining the United States of America from further asserting any right, title, or interest in or to any of said land or minerals or any part thereof and from interfering with the possession, management, or development of said land by the State of Utah.

2. That this Court appoint a master to hear and consider all admissible evidence relating to the claims of ownership and to make his findings and recommendations to this Court.

3. For such other and further relief as this Court may deem proper and necessary in these premises.

Phil L. Hansen
Attorney General of Utah

Counsel for Plaintiff

236 State Capitol Building
Salt Lake City, Utah

State of Utah }
County of Salt Lake } ss

Calvin L. Rampton, first being duly sworn upon his oath, deposes and says that he is the duly elected, qualified, and acting Governor of the State of Utah; that he has read the contents of the foregoing complaint; that the same are true of his own knowledge, except as to

those matters alleged therein on information and belief; that as to those, he believes the same to be true.

.....

Calvin L. Rampton
Governor of Utah

Subscribed and sworn to before me this 27th day of February, 1967.

.....

Clyde L. Miller
Secretary of State of Utah

CERTIFICATE OF SERVICE

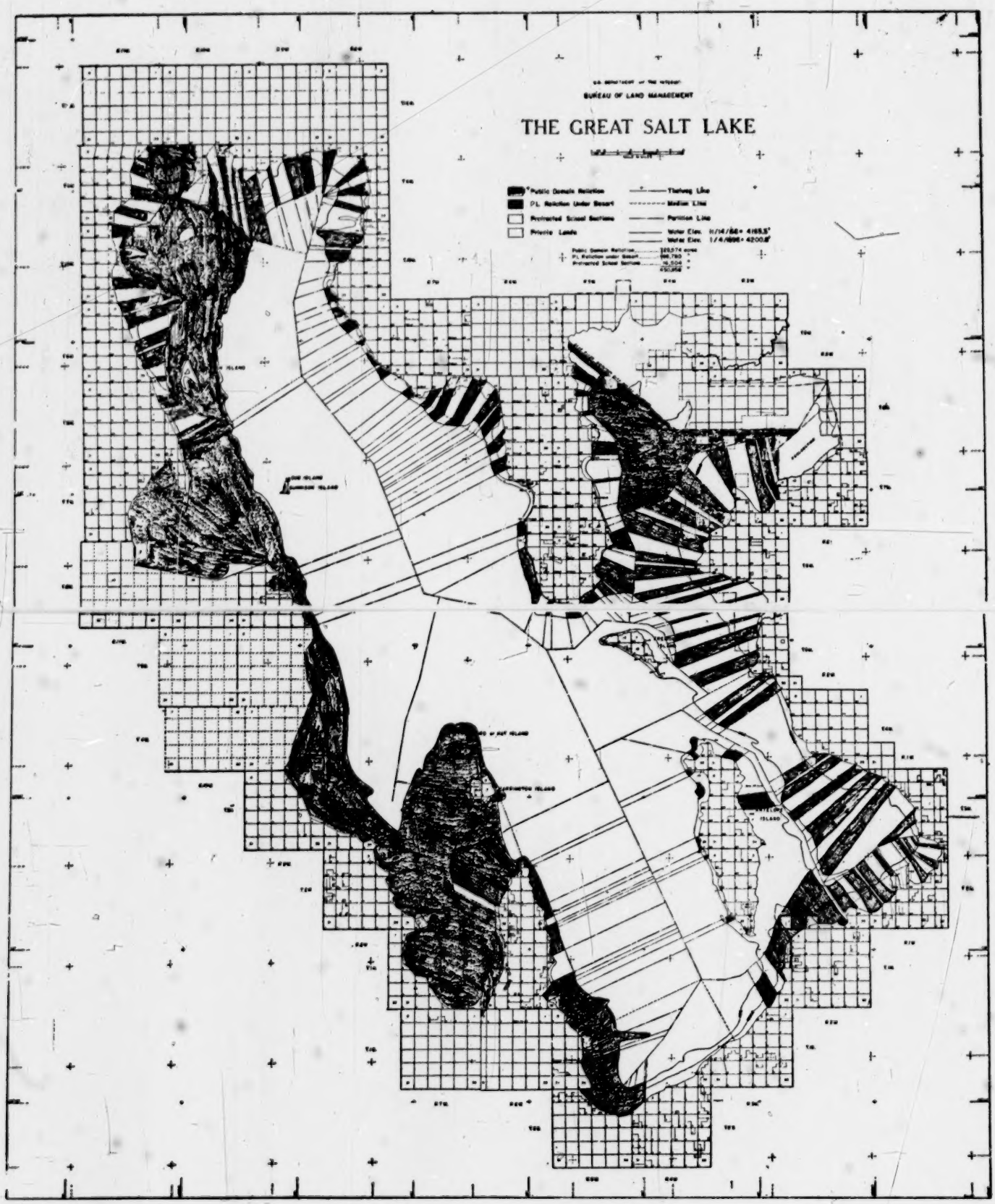
I, Phil L. Hansen, Attorney General of the State of Utah, counsel for plaintiff, and a member of the bar of this Court, hereby certify, in accordance with Rule 33(b) of the rules of this Court, that five copies of the foregoing motion for leave to file complaint and complaint were personally served upon the Solicitor General of the United States of America, Department of Justice, Washington 25, D.C., counsel for defendant United States of America, by having same delivered to his office, strictly in accordance with the requirements of Rule 33 (1) and (2) of the rules of this court, this 1st day of March, 1967.

.....

Phil L. Hansen
Attorney General of Utah

Counsel for Plaintiff

236 State Capitol Building
Salt Lake City, Utah


BUREAU OF LAND MANAGEMENT
THE GREAT SALT LAKE
Public Domain Reliction
P.L. Reliction Under Resort
Protracted School Sections
Private Lands
Thalweg Line
Median Line
Partition Line
Water Elev. 11/14/86= 4193.5'
Water Elev. 1/4/1986= 4200.8'

APPENDIX

Act of June 3, 1966 (Public Law 89-441, 80 Stat. 192) as amended by the Act of August 23, 1966 (Public Law 89-542)

AN ACT TO authorize conveyance of certain lands to the State of Utah based upon fair market value

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

Sec. 1. The Secretary of the Interior shall within six months of the date of the passage of this Act complete the public land survey around the Great Salt Lake in the State of Utah by closing the meander line of that Lake, following as accurately as possible the mean high water mark of the Great Salt Lake used in fixing the meander line on either side of the unsurveyed areas.

Sec. 2. Subject to the other provisions of this Act, the Secretary of the Interior shall by quitclaim deed convey to the State of Utah all right, title, and interest of the United States in lands including brines and minerals in solution in the brines or precipitated or extracted therefrom, lying below the meander line of the Great Salt Lake in such State, as duly surveyed heretofore or in accordance with Section 1 of this Act, whether such lands now are or in the future may become uncovered by the recession of the waters of said lake: Provided, however, that the provisions of this Act shall not affect (1) any valid existing rights or interests, if any, of any person, partnership, association, corporation, or other nongovernmental entity, in or to any of the lands within and below said meander line, or (2) any lands within the Bear River Migratory Bird Refuge and the Weber Basin Federal reclamation project. Such conveyance shall be made when the survey required by section 1 has been completed and the agreement required by section 6 has been made.

Sec. 3. The conveyance authorized by this Act shall

contain an express reservation to the United States of all minerals, except brines and minerals in solution in the brines, or precipitated or extracted therefrom in whatever Federal lands there may be below the meander line of Great Salt Lake, together with the right to prospect for, mine, and remove the same. The minerals thus reserved shall thereupon be withdrawn from appropriation under the public land laws of the United States, including the mining laws, but said minerals, in the discretion of the Secretary of the Interior, may be disposed of under any of the provisions of the mineral leasing laws that he deems appropriate: Provided, That any such lease shall not be inconsistent. as determined by the Secretary of the Interior, with the other uses of said lands by the State of Utah, its grantees, lessees, or permittees.

Sec. 4. As a condition of the conveyance authorized in this Act, and in consideration thereof, the State of Utah shall, (a) upon the express authority of an Act of its legislature, convey to the United States by quitclaim deed all of its rights, title, and interest in lands upland from the meander line, which lands the State may claim against the United States by reason of said lands having been, or hereafter becoming, submerged by the waters of Great Salt Lake, and (b) pay to the Secretary of the Interior the fair market value, as determined by the Secretary, of the lands (including any minerals) conveyed to it pursuant to section 2 of this Act. The Secretary of the Interior, after consultation with the State of Utah, may accept in payment in behalf of the United States, in lieu of money only, interests in lands, interests in mineral rights, including those beneath the lakebed, the relinquishment of land selection rights, or any combination thereof equal to the fair market value.

Sec. 5. Within nine months after the date of enactment of this Act the State of Utah shall elect one of the alternatives set out in subsection (a) or subsection (b) of this section, and a failure so to elect shall render null and void any conveyance pursuant to this Act. The State —

(a) may request the Secretary of the Interior to determine the fair market value of the lands as of the date of the completed survey:

(1) In reaching a determination of the fair market value as of that time, the Secretary shall make a comprehensive study of the lands and minerals which are the subject of this Act;

(2) Nothing in this section shall be deemed to limit or prevent the Secretary from giving consideration to all factors he deems pertinent to an equitable resolution of the question of the proper consideration to be paid by the State of Utah to the United States for such lands;

(3) The Secretary shall transmit his value determination to the Governor of the State of Utah not later than two years after he receives the request referred to above in this subsection. If payment by the State of Utah of the fair market value is not made within two years after the receipt of the Secretary's value determination, the conveyance authorized by section 2 of this Act shall be null and void; or

(b) may maintain an action in the Supreme Court of the United States to secure a judicial determination of the right, title and interest of the United States in the lands conveyed to the State of Utah pursuant to section 2 of this Act. Consent to join the United States as a defendant to such an action is hereby given. Within two years from the completion of the action, the Secretary of the Interior shall determine the fair market value, as of the date of the decision of the court, of such lands (including minerals) conveyed to the State pursuant to section 2 of this Act as may be found by the court to have been the property of the United States prior to the conveyance. If payment by the State of Utah of the fair market value is not made within two years after the receipt of the Secretary's value determi-

nation, the conveyance authorized by section 2 of this Act shall be null and void.

Sec. 6 Pending resolution of the amount and manner of compensation to be paid by the State of Utah to the United States as provided herein, the State of Utah is authorized after making the agreement required by this section to issue permits, licenses, and leases covering such of these lands as the State deems necessary or appropriate to further the development of the water and mineral resources of the Great Salt Lake, or for other purposes. The State of Utah, by or pursuant to an express act of its legislature, shall agree to assume the obligation to administer the lands, for the purposes set forth above, in the manner of a trustee and any proceeds derived by the State of Utah therefrom shall be paid to the United States, until compensation for the full value of said lands as herein provided is made. Such proceeds paid to the United States shall be to the credit of the State of Utah as part of the compensation for which provision is made herein. If the question of the title to the United States is litigated as authorized in section 5(b) of this Act, and it is determined that the United States has no right, title, or interest in lands from which revenues have been derived and paid to the United States pursuant to this section, the revenues paid to the United States shall be returned to the State of Utah without interest.

In the event the conveyance authorized by section 2 of this Act becomes null and void, then any valid permits, licenses, and leases issued by the State under authority of this section, shall be deemed permits, licenses, and leases of the United States and shall be administered by the Secretary in accordance with the terms and provisions thereof, excepting for land rental rates which rates shall be subject to change based upon fair rental value as determined by the Secretary of the Interior and shall be subject to review and appropriate modification not less frequently than every five years by the Secretary of the Interior in accordance with rules and regulations of the Department of the Interior.

In the Supreme Court of the United States

OCTOBER TERM, 1966

No. 31, Original

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA

RESPONSE TO MOTION FOR LEAVE TO FILE COMPLAINT

Section 5 of the Act of June 3, 1966, 80 Stat. 192, provides that, within nine months of the date of its enactment, the State of Utah may maintain an action in this Court to secure a judicial determination of the right, title and interest of the United States in the lands lying below the meander line of the Great Salt Lake. Section 5(b) gives the consent of the United States to be thus sued.

The complaint that the State of Utah proposes to file herein conforms to the requirements of the Act. Accordingly, the United States does not oppose the motion for leave to file the complaint. Indeed, we urge the Court to grant the motion. This original suit would appear to afford the only means of resolving a substantial controversy between the State and the United States over extensive and valuable lands

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and mineral deposits. In addition, important questions of law relating to the doctrine of reliction are presented, while the underlying facts are largely undisputed. The case, in short, would appear to present a suitable occasion for invocation of the original jurisdiction of this Court.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

MAY 1967.

U. S. GOVERNMENT PRINTING OFFICE: 1967

In the Supreme Court of the United States

OCTOBER TERM, 1967

No. 31, ORIGINAL

STATE OF UTAH, PLAINTIFF

v.

UNITED STATES OF AMERICA

ANSWER

I

The defendant admits the allegations of Paragraph I of the Complaint.

II

The defendant denies the allegation of the first sentence of Paragraph II of the Complaint that the State of Utah owns the lands which are the subject of this suit. The defendant admits the remaining allegations in Paragraph II.

III

The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation of the first two sentences of Paragraph III of the Complaint that the Great Salt Lake is a navigable body of water. The remaining allegations of Para-

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graph III are conclusions of law, premised for the most part upon the supposed navigability of the Great Salt Lake; such legal conclusions require no response in this Answer, and therefore are neither admitted nor denied, but to the extent that they may be construed as allegations of fact, they are denied.

IV

The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in the first three sentences of Paragraph IV of the Complaint. The defendant denies the allegations of the fourth and fifth sentences of Paragraph IV of the Complaint. The defendant admits the truth of the allegation of the sixth sentence of Paragraph IV. The defendant denies the allegations of the seventh and eighth sentences of Paragraph IV. The defendant admits the allegations of all of the remaining sentences of Paragraph IV, except for the thirteenth, as to which defendant denies plaintiff's claim of ownership, and the last (the fourteenth), which the defendant denies in its entirety.

V

The allegation of the first sentence of Paragraph V of the Complaint is a conclusion of law, which requires no answer, and which, therefore, is neither admitted nor denied; but to the extent that it may be construed as an allegation of fact, it is denied. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation

of the second sentence of Paragraph V of the Complaint. The remaining allegations of Paragraph V are merely argumentative, and do not require an answer, but to the extent that they may be construed as allegations of fact, they are denied.

VI

The defendant denies each and every allegation of the Complaint not specifically admitted, denied, or qualified herein.

WHEREFORE, having fully answered, the defendant prays this Court to confirm, declare and establish that the United States is the owner of all right, title and interest in all of the lands described in Section 2 of the Act of June 3, 1966, 80 Stat. 192, as amended by the Act of August 23, 1966, 80 Stat. 349, and that the State of Utah is without any right, title or interest in such lands, save for the right to have these lands conveyed to it by the United States, and to pay for them, in accordance with the provisions of the Act of June 3, 1966, as amended.

Respectfully submitted.

THURGOOD MARSHALL,
Solicitor General.

JULY 1967.

U.S. GOVERNMENT PRINTING OFFICE: 1967